

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

B5

DATE:

OFFICE: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

FEB 09 2012
IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in business and a member of the professions holding an advanced degree. The petitioner seeks employment as a management training consultant. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for the underlying classification, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement and supporting exhibits.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as an alien of exceptional ability in business and/or as a member of the professions holding an advanced degree. Which of these two classifications better suits the petitioner is not relevant to this discussion. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation (NYSDOT), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on May 12, 2010. At the same time, the petitioner's spouse filed a separate petition. In a joint statement, both individuals stated:

In the summer of 2007 we purchased 35 acres of land in Colorado and during the last, financially difficult year we have invested \$800,000 in local labour, materials and knowledge designing and building an eco-friendly home for our use, hopefully as a permanent residence. As well as the house build [*sic*] we have also owned, for a number of years, 4 weeks timeshare at a resort on Lake Tahoe.

In addition I believe that both of us bring imaginative and distinctive skills to our respective areas of competence that would enhance any business where these could be utilised.

While substantial, the petitioner's investment in a house and surrounding real estate does not qualify the petitioner for an employment-based immigrant classification.

The petitioner provided the following description of her current work:

Proprietor of consultancy specialising in business development responsible for the overall financial success of the company; design, delivery and evaluation of a range of interventions UK wide and internationally; consultancy service to organisations including Equal Opportunities and Diversity, Project Management, the Facilitation of Change, establishing Competency Frameworks and Performance Management systems, Open Learning Centres; Investors in People consultancy; and senior HR locum roles.

In a separate statement, the petitioner provided more details about her work:

I worked for 15 years across the public, private and voluntary sectors in a variety of administrative, training and development and management roles until in 1995 I established The Learning Interventions Company, a management and training consultancy. I have a wide range of clients and, although I have a broad portfolio. I now specialise in Equal Opportunities and Diversity, Project Management, the Facilitation of Change, and Competency Frameworks and Performance Management.

Throughout this time I have been an active member of . . . the [REDACTED] . . . where I am currently a Member of the Membership and Education Committee, responsible with my colleagues for the introduction of a new membership structure and qualifications strategy. . . .

In 2002 I completed the writing of [REDACTED] . . . which I had co-authored with a consultant colleague and which was published by [REDACTED] (an international publisher in the field of training and development). It was the best selling and award winning publication that year. Aside from continuing to work in a consultancy capacity and in the design and delivery of management training, it is my intention to extend the volume of design and authoring work I do. . . .

Associated with this I have researched, designed and implemented a number of competency and performance management frameworks within UK based organisations and have designed and delivered training associated with other frameworks on mainland Europe.

Apart from the petitioner's personal statements, her initial submission consisted solely of documentation of her educational background and professional affiliations. These materials may establish the petitioner's eligibility to work as a management training consultant, but they do not distinguish her from others in that field. There exists no blanket waiver for workers in the petitioner's field, and therefore the petitioner must show why it is in the national interest to waive the job offer requirement that normally applies to workers in that field.

On June 10, 2010, the director issued a request for evidence, instructing the petitioner to "identify [her] proposed employment" and demonstrate that she meets all three prongs of the national interest test set forth in *NYSDOT*. In response, the petitioner stated:

I propose continuing to work for myself in the same way as I have done for the last 15 years in the UK trading as The Learning Interventions Company. . . . I now specialise in Equal Opportunities and Diversity, Project Management, the Facilitation of Change, and Competency Frameworks and Performance management. . . . In this way I have used my professional qualifications . . . and my certificate to practise in exceptional ways that differ from my peers.

The petitioner stated that her work "would be national in scope" because she has already served clients in several countries. The petitioner also observed that she had "established a second business () . . . to publish training material products which feature metaphor as the vehicle for the training. . . . There are now 6 titles in the series (Communication, Change, Leadership, Teams, Customers and Diversity) a combination of training manuals and audio CDs."

As evidence of specific prior achievement, the petitioner asserted that her business has taken in, on average, £70,000 per year, for an aggregate total of over £1 million over the course of her career. The petitioner also cited "business case studies," and claimed that "only 9.84 of Fellows in [her] profession" possess her combination of credentials and experience.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Therefore, the petitioner cannot establish eligibility for the waiver simply by listing her credentials and achievements and declaring them to be superior to those of others in her field.

The petitioner submitted no independent evidence to establish the impact of her work. Instead, she submitted copies of her company's own promotional materials, such as "case studies" on the letterhead of the (). The AAO will discuss these materials further in the context of the appeal.

The director denied the petition on November 2, 2010, acknowledging the intrinsic merit of the petitioner's training work, but finding that the petitioner failed to establish its national scope. The director also asserted that the petitioner did not meet the third prong of the *NYSDOT* national interest test simply by listing her qualifications and credentials.

On appeal, the petitioner states: "Although I have based my business in one particular rural, market town in the UK for 15 years . . . , the clients I have generated have been based across the UK and indeed as far afield as Guernsey, Germany, Brussels and Abu Dhabi; in addition I also recently sold product to South Korea." The petitioner submits no first-hand evidence to support these specific claims, but the record shows that the petitioner's businesses involve dissemination of training materials with no inherent geographic limitation. The AAO therefore agrees with the petitioner that her work is, at least in principle, national in scope, and the AAO will withdraw the director's finding to the contrary.

With respect to the "case studies" on the petitioner's company's letterhead, the petitioner observes that "an independent Marketing Communications Company" interviewed representatives of her clients. The petitioner contends that the statements in the "case studies" represent the free and uncensored opinions of her clients.

The case studies quote representatives of various clients, such as the British Red Cross (BRC) and the British Humanist Association. A sample statement from a "case study" comes from [REDACTED] head of learning and development for the BRC, who stated:

We had previously worked with [the petitioner] in other areas of training. We felt that her ability to promote the free exchange of new ideas and creative solutions would take our project handling skills to a new level, retaining the best of our current thinking and liberating our managers for more effective delivery in the future. . . .

[The petitioner] had the right attitude and the right skills for our needs. She offered a real consultancy, combining formidable research and understanding with an objective viewpoint and commitment to our goals. . . .

We now have a project management training programme that has exceed[ed] our expectations.

These quotations establish client satisfaction, but offer no objective means by which to compare the petitioner with others in her field. Furthermore, because the petitioner herself (or at least her company) chose these examples, there is no way to tell whether they are representative of the company's usual results.

The petitioner states that, as a result of her efforts, "the British Red Cross is better able to meet the emergency response and other project needs through its staff nationally and internationally." The record, however, contains no objective documentation (such as statistical evidence) to show that the petitioner's training materials have had a significant effect on the BRC's performance.

For the reasons discussed above, the anecdotal reports in the "case studies" are not sufficient to demonstrate that the petitioner stands above others in her field to an extent that would warrant the special benefit of a national interest waiver.

A photograph of a plaque from [REDACTED] shows that the petitioner co-wrote the [REDACTED]. The record contains no further information about the volume of sales, or about [REDACTED] other titles. Therefore, the significance of this recognition is not evident from the available documentation.

The petitioner notes that she would be self-employed, and therefore would not deprive a United States worker of an employment opportunity. She would, however, be competing for clients with others in her field. Furthermore, if Congress had intended that self-employment is, by itself, grounds for an exemption from the job offer requirement, then Congress would have made that intent clear in the statutory language.

The petitioner asserts that her work will create additional employment in the United States. After 15 years of self-employment in the United Kingdom, the petitioner claims one full-time employee (a secretary/administrator) as well as intermittent contract labor. While job creation is certainly in the national interest of the United States, it does not follow that any and all job creation, whatever its scale, establishes eligibility for the waiver. Furthermore, as noted previously, nearly all of the jobs the petitioner claims to have created come not from the petitioner's own occupational activities, but from the design and construction of her house. The petitioner has not shown how her contributions distinguish her from her peers.

As is clear from a plain reading of the statute, it was not the intent of Congress that every alien of exceptional ability, or member of the professions holding an advanced degree, should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given occupation, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.